IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

DOUGLAS SORENSON
PLAINTIFF

v. C.A. NO. 5:04-CV-123-4

STATE OF GEORGIA
STATE TROOPER GARRETT
DEFENDANTS

Civil Order File Volume 90, page 108

JUDGMENT

Pursuant to the Order of this Court filed August 18, 2004, JUDGMENT is hereby entered dismissing this action.

This 18th day of August, 2004.

GREGORY J. LEONARD

Cheryl M. Alston

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DOUGLAS SORENSON Plaintiff	:	
VS.	:	NO. 5:04-CV-123-4
STATE OF GEORGIA TROOPER GARRETT Defendents	:	

ORDER

Plaintiff DOUGLAS SORENSON has filed this pro se civil rights action pursuant to 42 U. S.C. §1983. He has sued defendents STATE OF GEORGIA and STATE TROOPER GARRETT alleging that his constitutional rights were violated. The plaintiff complains of defendent Garrett,s conduct while issuing him a seatbelt citation. He further aver that O.C.G.A. §40-8-76.1, commonly known as State "Seat Belt Law", serves no valid relationship to the purpose for which it was enacted and should be dismantled.

Before the court is the defendents' MOTION TO DISMISS Tab#4. On June 24,2004, plaintiff filed a response to defendents' motion. Tab #18. In entering this recommendation, the undersigned has carefully considered both the defendents' motion and the plaintiffs' response.

LEGAL STANDARD-MOTION TO DISMISS

For a motion to dismiss to be granted, plaintiffs' complaint must evidence that there is no set of facts entitling them to relief. Executive 100 Inc. v. Martin County 922 F. 2d 1536, 1539 (11th Cir. 1991); see also Luckey v. Harris 860 F. 2d 1012, 1016-17 (11th Cir. 1988) and Jackam v. Hospital Corp. of Am. Mideast Ltd. 800 F.2d 1577,1579 (11th Cir. 1986) In such a situation, Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a court to dismiss a complaint on the basis of a dispositive issue of law. Neitzke v. Williams 490 U.S. 319, 326, 109 S.Ct. 1827, 1832, 104 L.Ed.2d 338 (1989).

If, as a matter of law, it is clear that no relief could be granted under any facts that could be proved consistent with the allegations, a claim must be dismissed, regardless of whether it is based on an outlandish legal theory or on a close but unavailing one. Id. Rule 12(b)(6) does not allow for dismissals based solely on the court's disbelief of a plaintiff's factual allegations. Id. See also Hishon v. King & Spalding 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d.

DISCUSSION

In their motion, the defendents state that the plaintiff's claims must be dismissed because they are entitled to Eleventh Amendment immunity qualified immunity, and because the plaintiff's allegations do not state a claim on which relief can be granted. in his response to the defendant's motion, the plaintiff argues that the defendants are not cloaked with official or quallified immunity, and that his complaint does state a claim under 42 U. S.C. §1983.

A. Failure To State A Claim

In any §1983 action, the initial question presented to the court is whether the essential elements of a §1983 cause of action are present. Parratt v. Taylor 451 U.S. 527, 535 (1981). It is essential that the conduct complained of deprived the plaintiff of rights privileges, or immunities guaranteed by the Constitution or laws of the United States. Id.

In the present case, plaintiff claims that defendant Garrett violated his constitutional rights by enforcing O.C.G.A. §40-8-76.1 Plaintiff further contests the constitutionality of said statute. The Georgia Supreme Court has previously upheld the constitutionality of O. C.G.A. §40-8-76.1 See C.W. Matthews Construction Co. vs. Gover 263 Ga. 108 (1993). Therefore, the enforcement of said law is constitutional. Accordingly, while plaintiff SORENSON may have claims against the defendants under another provision of state or federal law, his claims as set forth in his complaint do not rise to the level of a constitutional denial or deprivation of rights, privileges, or immunities as contemplated by 42 U.S.C. §1983.

Accordingly, IT IS ORDERED that the defendants' MOTION TO DISMISS be GRANTED.

SO ORDERED, this 17th day of August, 2004.

CLAUDE W. HICKS
UNITED STATES MAGISTRATE JUDGE

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 04-14799

District Court Docket No.
04-00123-CV-CWH-5-4

DOUGLAS SORENSON

Plaintiff-Appellant

vs.

STATE OF GEORGIA
STATE TROOPER GARRETT

Defendants-Appellees

Appeal from the United States District Court
for the Middle district of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this court.

Entered: April 15, 2005
For the Court: Thomas K. Kahn, Clerk
By: Gilman, Nancy

X

Before TJOFLAT, DUBINA, and MARCUS, Circuit Judges.

PER CURIAM:

Douglas Sorenson, proceeding pro se, appeals the magistrate judge's order dismissing his civil rights complaint, filed pursuant to 42 U.S.C. §1983, for failure to state a claim upon which relief can be granted, persuant to Fed. R. Civ P. 12(b)(6). We review de novo the gran of a Rule 12(b)(6) motion to dismiss accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. Spain v. Brown & Williamson Tobacco Corp. 363 F.3d 1183, 1187 (11th Cir. 2004). After thorough review of the record and careful consideration of the briefs, we find no reversable error and affirm.

Sorenson filed this lawsuit against State of Georgia and State trooper Garrett after Trooper Garrett cited Sorenson for failing to wear his seatbelt, in violation of Georgia law. In his pro se complaint, Sorenson alleged that Trooper Garrett violated his civil rights while issuing the citation. Sorenson also argued for the "dismantlement" of the applicable Georgia statute, O.C.G.A. §40-8-76.1,

commonly known as the "Seat Belt Law", because the statute has no valid relation to the purpose for which it was enacted. In support of this last argument, Sorenson highlighted that occupants of vehicles who wear their seatbelts sometimes are still killed in accidents, and someoccupants of vehicles who were killed while not wearing seatbelts would have been killed even with a seatbelt on.

Also in his complaint, Sorenson alleged that Trooper Garrett engaged in "unfavorable action" in violation of 42 U.S.C. §1983, and requested punitive damages for the emotional distress he suffered as a result of Garrett's actions and any other relief the court deemed appropriate. Specifically, Sorenson asserted that, prior to issuing him a seatbelt citation Garrett followed him onto private property, pointed a gun at him, grabbed him by the shirt, bent him over the patrol car, and verbally abused him.

The defendants moved to dismiss the complaint, arguing, inter alia that:(1) Sorenson failed to state a claim upon which relief can be granted

citing C.W. Matthews Contracting Co. Inc. v. Gover 428 S.E.2d 796, 798 (Ga 1993)(finding §40-8-76.1 was a "rational exercise of legislative power"); (2) Trooper Garrett acting in his official capacity, was not a "person" capable of being sued under 42 U.S.C. §1983 and (3) both the State of Georgia and Trooper Garrett were entitled to Eleventh Amendment immunity.

The magistrate judge granted the defendants' motion to dismiss, stating that since the Georgia Supreme Court upheld the constitutionality of §40-8-76.1 in C.W. Matthews Contracting Co. Trooper Garrett's enforcement of the law was constitutional and did not " rise to the level of a constitutional depri- of rights, privileges, or immunities as contemplated by 42 U.S.C. §1983." The magistrate judge also noted that even if Sorenson's complaint stated a claim under §1983, Garrett would be entitled to both Eleventh Amendment and qualified immunity, and State of Georgia is not a"person" subject to suit under §1983.

Viewing the facts in the light most favorable to Sorenson, we agree with the district court's decision that Sorenson did not allege a violation of his constitutional rights sufficient to warrent relief under §1983. It is clear that any force used by Trooper Garrett during the issuance of the citation was not excessive force in the consttitutional sense. After Sorenson pointed at him, Garrett followed him onto private property, pointed a gun at him grabbed him by the shirt, bent him over the patrol car, and verbally abused him. Simply put, Sorenson does not allege that he suffered any injuries during this incident and we can find no evidence that the force used was anything other than de minimus Cf Gold vs. City of Miami 121 F.3d 1442, 1446-47 (11th Cir. 1997)(noting that minimal pain from handcuffs is insufficient to establish a claim for excessive force); see also Nolin v. Isbell 207 F.3d 1253, 1257 (11th Cir. 2000). (holding the application of de minimus force without more, will not support a claim for excessive force in violation of the Fourth Amendment); Post vs. City of Fort Lauderdale 7 F.3d 1552, 1559-60 911th Cir. 1993)(finding

de minimus force where officer pushed plaintiff against a wall and applied a choke hold before placing him in handcuffs, despite the fact that the plaintiff was being arrested for violating a building code and did not resist arrest), modified in part 14 F.3d 583 (1994).

On this record, the magistrate judge did not err by dismissing Sorenson's complaint for failing to state a claim upon which relief can be granted, and we therefore affirm.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

ENTERED JUNE 24, 2005

No. 4-14799-JJ

DOUGLAS SORENSON

Plaintiff-Appellant

vs.

STATE OF GEORGIA
STATE TROOPER GARRETT

Defendants-Appellees

On appeal from the United States District Court for the Middle District of Georgia

ON PETITION FOR REHEARING EN BANC

Before: TJOFLAT, DUBINA, and MARCUS, Circuit Judges

PER CURIAM:

The Petition for rehearing is DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35 Federal Rules of Appellatte Procedure) the Petition for rehearing En Banc is DENIED.

OTHER MATERIAL

To help the Court further in understanding the case, Petitioner adds these pages of information used as evidence in the case:

GEORGIA TRAFFIC DEATHS
YEARLY TOTAL

Total Deaths in 1985--1362

1986--1542

1987--1604

1988--1660

1989--1632

1990--1564

1991--1393

1992--1324

1993--1407

1994--1437

1995--1501

1996--1582

1997--1584

1998--1579

1999--1514

2000--1548

2001--1656

2002--1531

2003--1344

CERTIFICATION

I do hereby certify that the information in this brief is both accurate and true.

Submitted with due respect by

Douglas Sorenson

DOUGLAS SORENSON?PETITIONER